



WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Environment

Clearinghouse Rule 05-058

Relating to minimum standards for county shoreland zoning ordinances.

Submitted by Department of Natural Resources.

July 23, 2009 Referred to Committee on Environment.

September 10, 2009 **PUBLIC HEARING HELD**

Present: (4) Senators Miller, Wirsch, Kedzie and Olsen.

Absent: (1) Senator Jauch.

Appearances For

- Russ Rasmussen, Madison — WDNR
- Jim Holperin, Eagle River — Senator, 12th Senate District
- Mark Schumacher, Wautoma — Waushara County
- Lori Grant, Madison — River Alliance of Wisconsin
- Kathi Kilgore, Madison — Wisconsin Association of Campground Owners

Appearances Against

- Jan Bax, Waupaca — himself
- Brenda Vinall-Mogel, Grantsburg — Herself and Town of Wood River
- Michael Stapleton, Pardeeville — Wisconsin County Code Administrators
- Joe Handrick, Minocqua — Town of Minocqua
- Karl Jennrich, Rhineland — Oneida County
- Jim Erdman, Oshkosh — Town of OshKosh
- Gregg Walker, Minocqua — himself

Appearances for Information Only

- John Reinemann, Madison — Wisconsin Counties Association

Registrations For

- Amber Meyer Smith, Madison — Clean Wisconsin
- George Meyer, Madison — Wisconsin Wildlife Federation
- Bill O'Connor, Madison — Wisconsin Association of Lakes
- Brad Boycks, Madison — Wisconsin Builders Association
- Shahla Werner, Madison — Sierra Club

Registrations Against

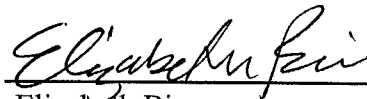
- Dan Meyer, Eagle River — Representative, 34th Assembly District
- Curt Witynski, Madison — League of Wisconsin Municipalities
- Dan Krenke, Waupaca — himself

Registrations for Information Only

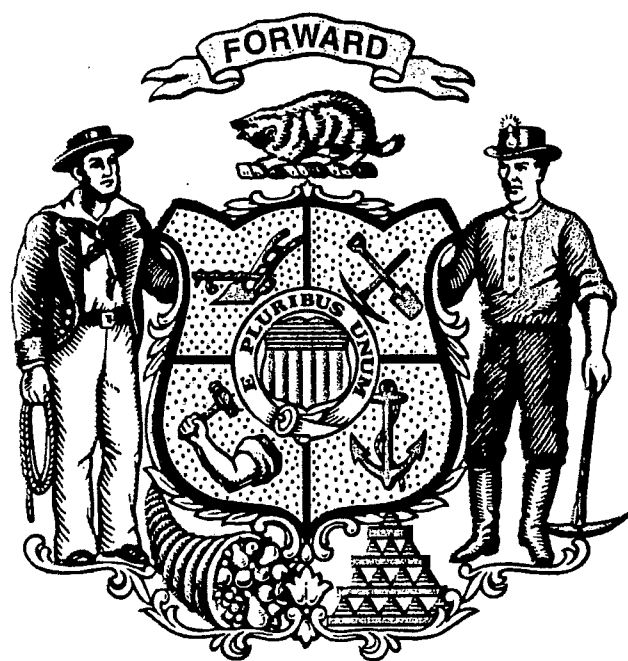
- Gerald Miller, Monona — himself

November 11, 2009 Modifications received.

November 30, 2009 No action taken.

A handwritten signature in cursive script, appearing to read "Elizabeth Bier", is written over a horizontal line.

Elizabeth Bier
Committee Clerk



**Hearing Notes
September 10, 2009**

Call Public Hearing to Order and ask Clerk to call the roll

- **ROLL CALL**

AB 139, relating to littering and providing a penalty

- Rep. Jorgensen, Sen. Carpenter

AB 258, relating to the disposal of used automotive oil filters and oil absorbent materials and providing a penalty

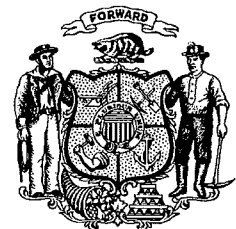
- Rep. Hubler, Sen. Harsdorf

AB 281, relating to the restriction on the amount of phosphorus in certain cleaning agents

- Rep. Black

CR 05-058, relating to minimum standards for county shoreland zoning ordinances

Public Hearing concludes, adjourn meeting



EXECUTIVE'S OFFICE
Brown County

305 E. WALNUT STREET
P.O. BOX 23600
GREEN BAY, WI 54305-3600

PHONE (920) 448-4004



JAYME SELLEN

LEGISLATIVE ASSISTANT

July 7, 2009

Rep. Karl Van Roy
State Capitol
Room 123 West
P.O. Box 8953
Madison, WI 53708

Dear Representative Van Roy,

Brown County is extremely dedicated to conserving our natural resources. We have a long and clear history of performing and supporting conservation projects. However, the proposed revisions of Chapter NR 115 of the Wisconsin Administrative Code do raise some red flags. Our concerns center on the impervious surface standards and the cost to fulfill this unfunded mandate. We are asking for your help to get a public hearing on these changes.

The impervious surface standard allows up to 15 percent of a shoreland lot to contain impervious surfaces; between 15 percent and 30 percent would require mitigation. Anything over 30 percent would require us to deny any request for permits to build or add-on. Many of our current urban shoreland lots contain more than 30 percent impervious surfaces with only a modest sized house, driveway and sidewalk. These owners will not be allowed to build a patio, add-on to their house or install a pool under these new regulations. Attached are a few examples of houses on shoreland lots that have exceeded the impervious surface standard with only a modest size house.


Again, Brown County is dedicated to protecting our natural resources, however, we can not continue to absorb unfunded mandates passed down through state statutes or administrative codes. Revenue from permit fees do not pay the county's total expense to administer and enforce this program and increasing fees will only lead to more homeowners building without obtaining the proper permits.

Without a strong financial commitment from the state our zoning staff will not have the resources necessary to enforce NR 115. At a minimum, additional staff would be necessary to perform inspections and meet the other requirements of NR 115. More people will be seeking mitigation to meet their construction goals, which in turn will require more inspection time. Our ability to administer and enforce NR 115 is at a disadvantage due to current economic conditions, our loss of revenue from the state and federal governments, levy limits and the property taxpayer's ability to pay.

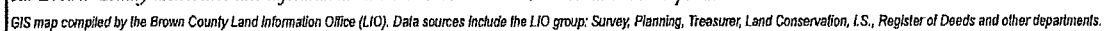
We respectfully request NR 115 be vetted in full public view and instead of the current passive review process. The proposed changes to NR 115 impact many families and businesses. The full Legislature must to their due diligence and hold public hearings on this matter.

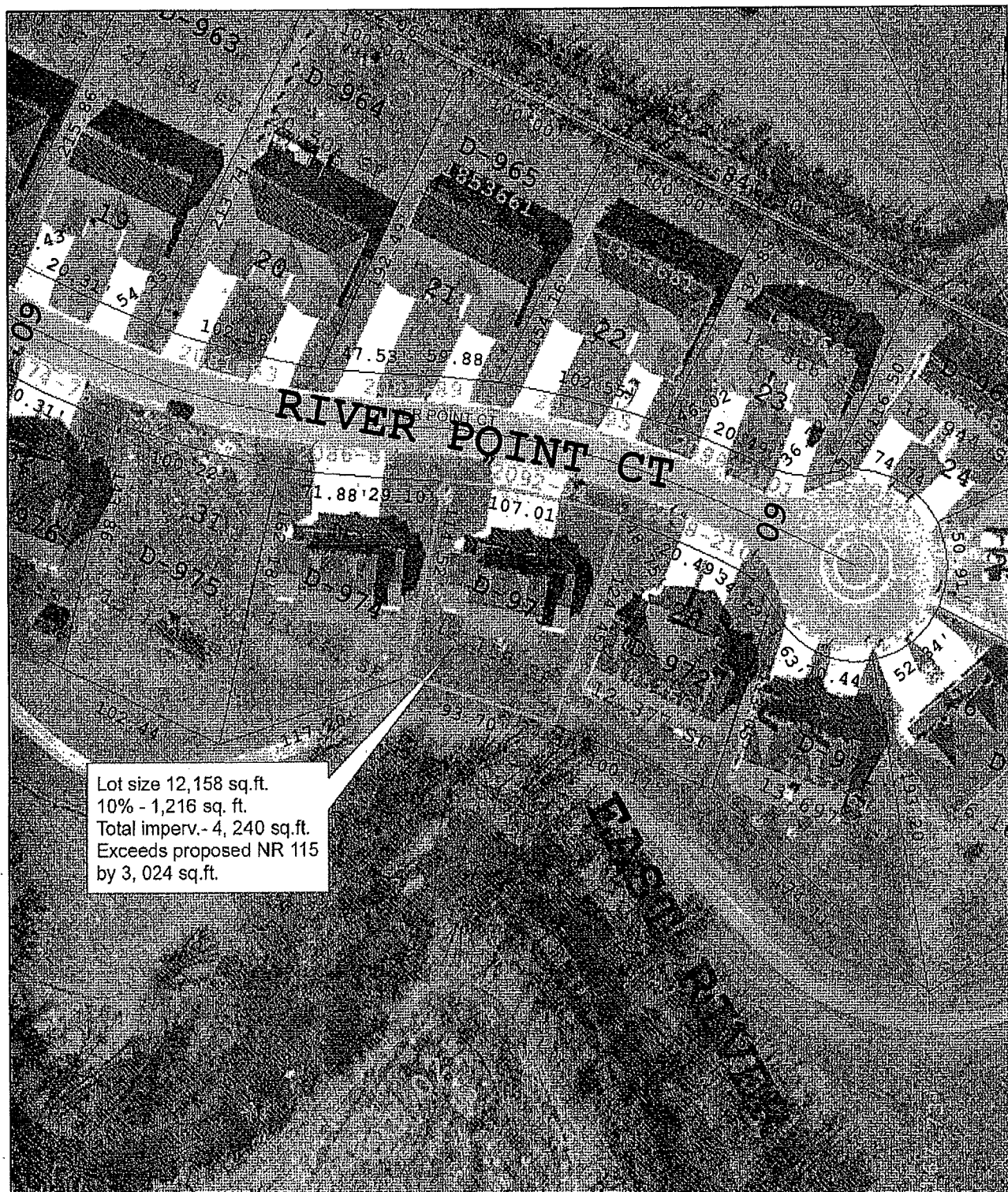
Thank you for your consideration. Please contact me if you have any questions.

Sincerely,



Jayme Sellen
Legislative Assistant



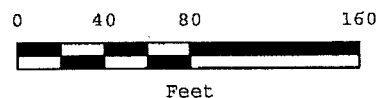


Example of Duplex lots

D-973

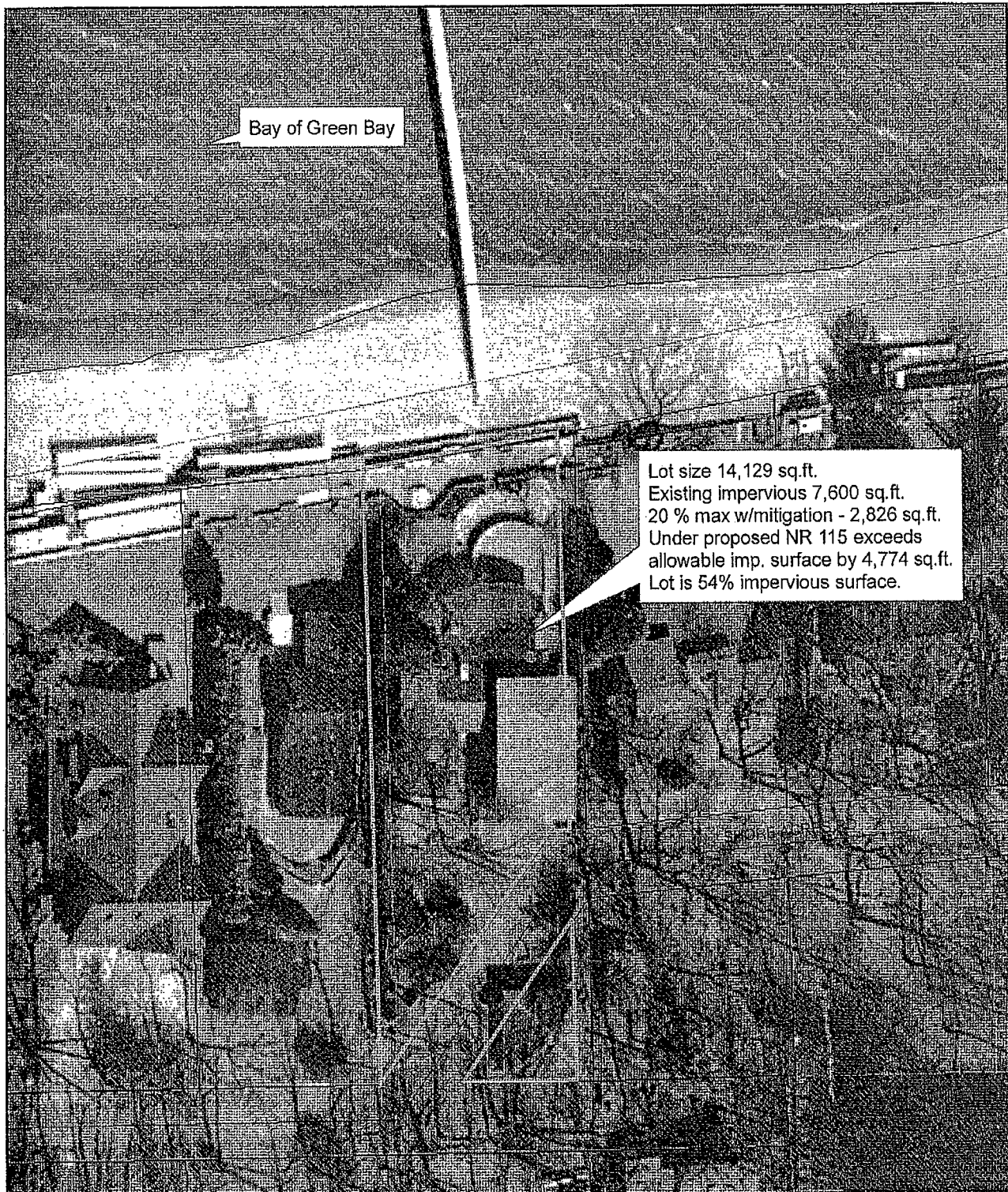
This map was created using GIS "Layers" from various dates/sources. Not all "layers" are in synch with each other. Please call 920-448-6295 for more details, or visit: www.co.brown.wi.us/land_information_office/

Map printed 3/13/2007 at 10:22 AM by BC-PALS-011



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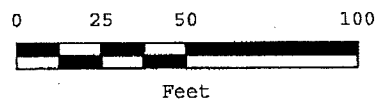
GIS map compiled by the Brown County Land Information Office (LIO). Data sources include the LIO group: Survey, Planning, Treasurer, Land Conservation, I.S., Register of Deeds and other departments.



Proposed additions no permit applied for yet.
Bush property on the Bay of Green Bay GB-698

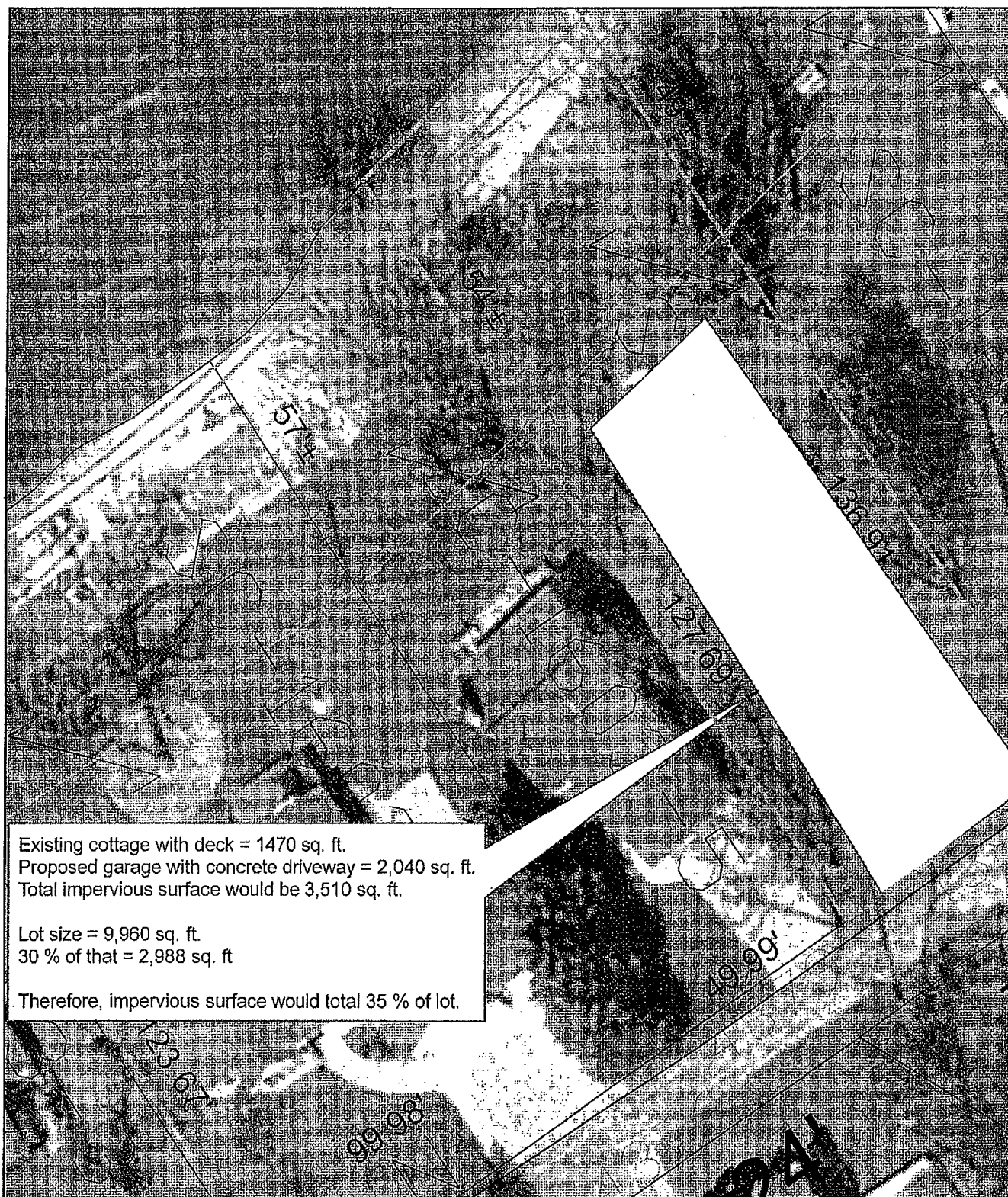
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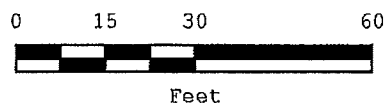
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Part of Brown County, WI
SC-1603-6

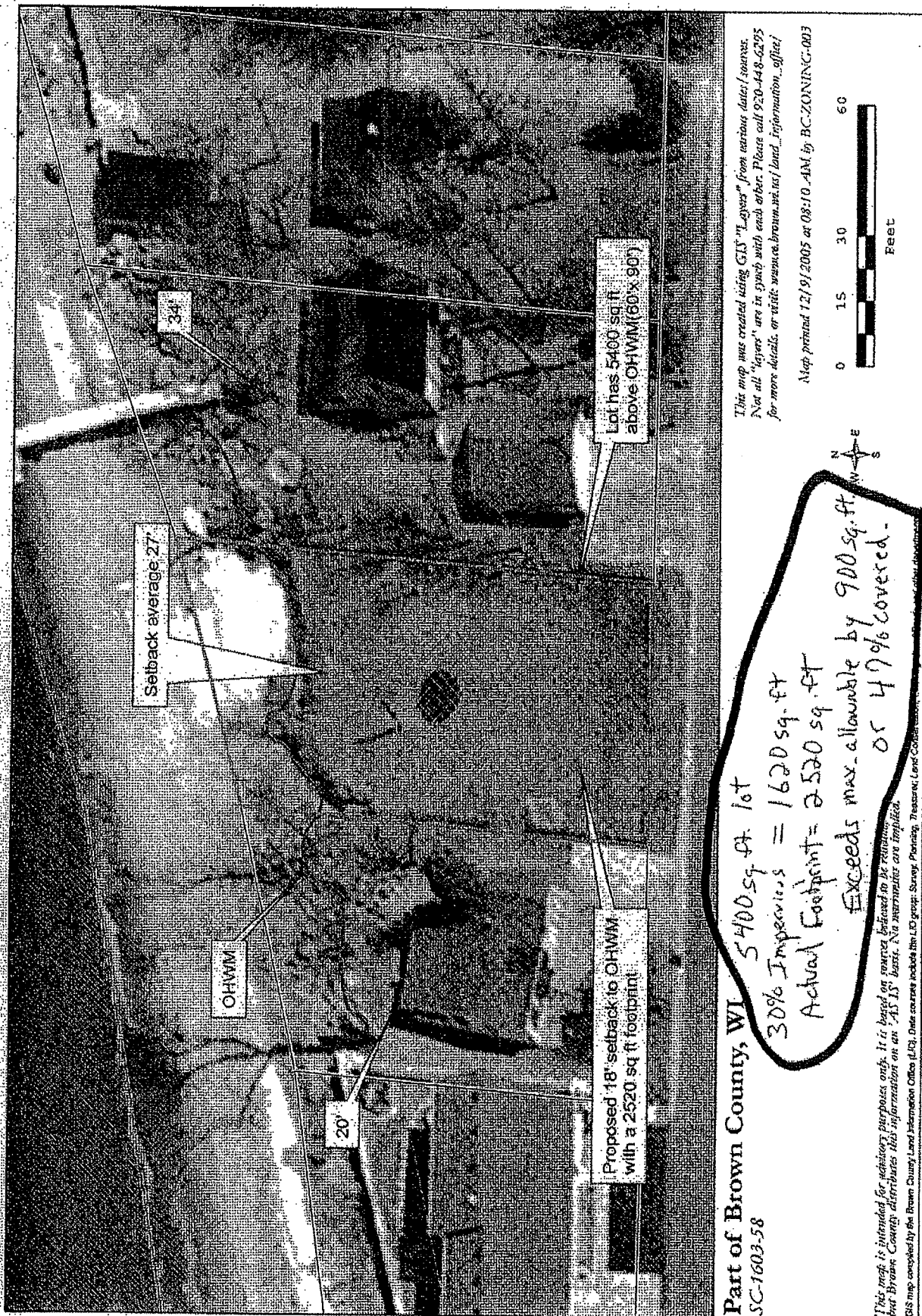
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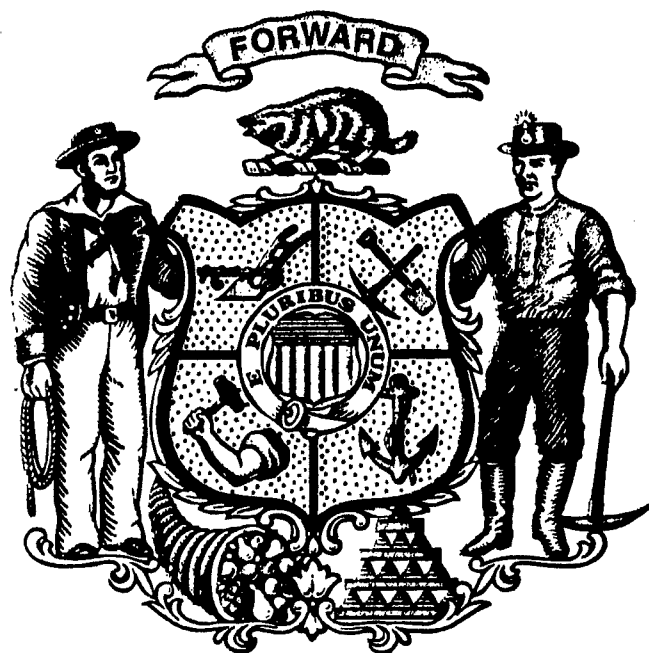
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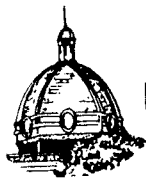


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GIS map compiled by the Brown County Land Information Office (LIO). Data sources include the LIO group: Survey, Planning, Treasurer, Land Conservation, I.S., Register of Deeds and other departments.







**ONEIDA COUNTY
PLANNING & ZONING DEPT.**

Karl E. Jennrich
Zoning Director

COURTHOUSE, P.O. Box 400
Rhinelander, WI 54501

715-369-6130
FAX 715-369-6268

***Oneida County
Planning & Zoning Department***

Courthouse Building

PO Box 400

Rhineland WI 54501-0400

Telephone 715/369-6130

FAX 715/369-6268

Email: zoning@co.oneida.wi.us

July 20, 2009

Mr. Mark Miller, Chair
Environmental Committee
Room 317 East
State Capitol
PO Box 7882
Madison WI 53707-7882

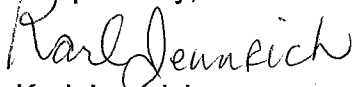
Dear Senator Miller:

Senator Jim Holperin has stated that you may be holding public hearings on a rule proposed by the Department of Natural Resources regarding revisions to NR 115. The Oneida County Planning and Zoning Department, at the request of the Oneida County Planning and Zoning Committee, has sent correspondence regarding Oneida County's concerns regarding the proposed NR 115 Rule.

The Oneida County Planning and Zoning Committee respectfully requests that your Environmental Committee consider holding a public hearing in Northern Wisconsin. In particular, the Committee would request a public hearing to be held in either Oneida or Vilas County. As you are aware, Oneida and Vilas County have a large number of lakes. Oneida County alone has over 1,000 lakes within its jurisdiction. The Planning and Zoning Committee believes that it would be appropriate that the areas that will be affected the most by the revision to NR 115 be given the opportunity to provide their comments and concerns.

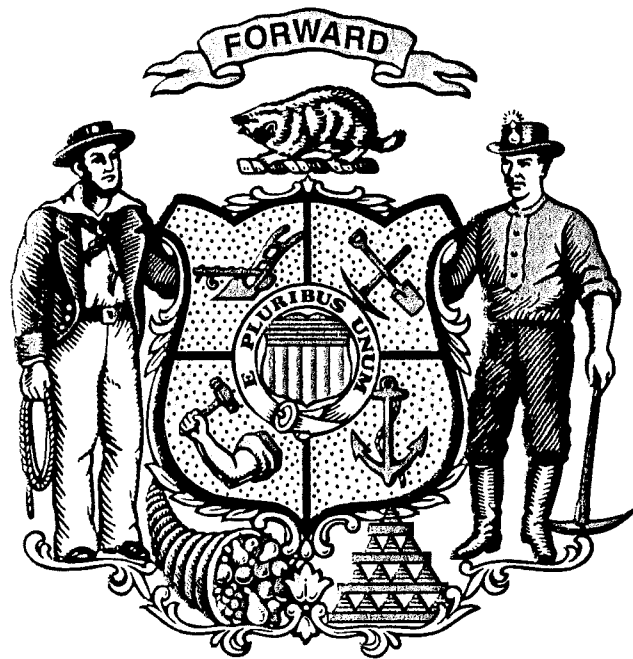
If you have any questions, feel free to contact me. I can be reached at 715/369-6176 or email kjennrich@co.oneida.wi.us.

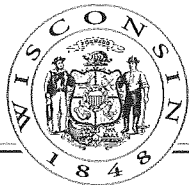
Respectfully,



Karl Jennrich
Zoning Director

CC: Planning and Zoning Committee
Senator Jim Holperin, 12th Senate District





State Senator Sheila Harsdorf

July 28, 2009

Senator Mark Miller
Chair, Senate Committee on Environment
Room 317 East, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Miller:

I am writing to request that you to hold a public hearing on Clearing House Rule 05-058, relating to minimum standards for county shoreland zoning ordinances. I have heard from a number of residents of the 10th Senate District regarding their concerns if the Department implements this rule in its current form.

Since this proposed rule will have far-reaching effects on private property, holding a public hearing will enable those affected to explain to the Committee how the rule will personally impact them. I would greatly appreciate your scheduling of a public hearing to facilitate public input.

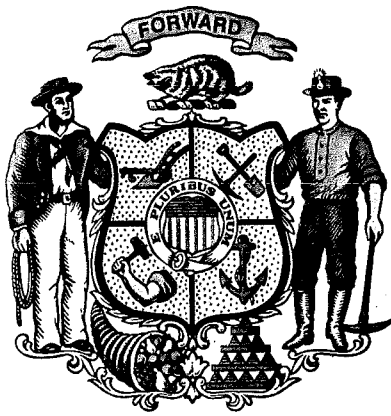
Thank you for your consideration of this request.

Sincerely,

Sheila Harsdorf
State Senator
10th Senate District

Sh/JJ/mww

CC: Senate Committee on Environment Members





KARL VAN ROY

STATE REPRESENTATIVE

July 31, 2009

Senator Mark Miller
Chairman of Senate Committee on Environment.
317 East, State Capitol
Madison, Wisconsin

Dear Senator Miller,

Clearinghouse Rule 05-058 was recently referred to your committee for legislative review. This rule makes numerous changes to shoreland zoning which will have a significant impact on homeowners in Green Bay as well as other waterfront residents in the state. Furthermore, the rule imposes regulation and enforcement responsibilities on county zoning employees without providing any funding mechanism for the added work. Given the fact that the state budget already makes numerous funding cuts to our counties, it is unconscionable that the state would consider approving an unfunded mandate that would negatively impact county budgets even further.

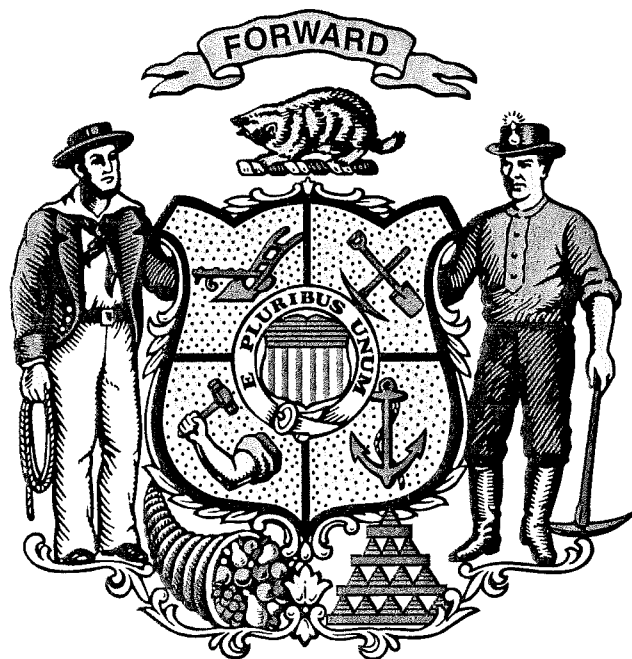
On behalf of the citizens of Green Bay as well as the Brown County government, I respectfully request that a public hearing be held by the committee on this clearinghouse rule. The citizens of this state would be better served by having a public hearing so they can know what this rule would do and how it would impact their property rights and their county government. They deserve the opportunity to share their thoughts and opinions with the state legislature.

Attached is a letter from the Brown County Executive's office asking for a public hearing and providing some examples of how homeowners in Green Bay would be impacted by these rule changes. I'm sure they would be happy to discuss this issue with you should you wish to call them.

Thank you for taking the time to consider my request. If you need any further information from me, please do not hesitate to ask.

Sincerely,

Rep. Karl Van Roy
90th Assembly District



August 6, 2009
6206 Nordic Shore Drive
Lake Tomahawk, WI 54539-9382

Senator Mark Miller
Room 317 East
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Subject: Proposed NR 115

Dear Senator Miller:

When the Senate Committee on Environment considers the proposed NR 115 it is urged to follow Vilas County's successful practice and change the impervious surfaces standards to apply only to the first 300 feet of land above the ordinary high water mark of a lake. The committee should consider that Vilas County has more lakes than any other county in the state.

Applying the impervious surfaces standards to the entire 1,000 feet of the lake shoreland zone results in serious inequities between properties and can produce unwanted results.


Consider two 100' wide lake front lots, one 300' deep and the second 1,000' deep and apply the proposed 15% impervious surface standard to each. The first lot, having an area of 30,000 square feet, would be permitted 4,500 square feet of impervious surface. The second lot, having an area of 100,000 square feet, would be permitted 15,000 square feet of impervious surface. As lake front development will be built close to the lake, in the first 300', the second lot would be allowed over three times the impervious surface of the first, which is not equitable, and would be allowed to cover half of the land surface in the 300' closest to the lake which is an undesirable and unintended result.

The second lot in the example is not far fetched as there are two 100' by 700' lots for sale on our lake right now.

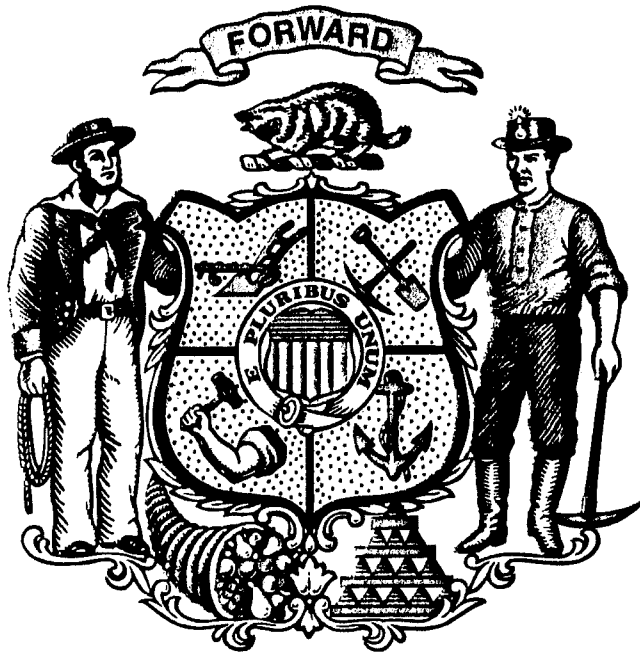
Furthermore, applying the impervious surface standards to the full 1,000' of the lake shoreland zone creates some unrealistic expectations in fully urbanized business districts of towns such as Minocqua and Three Lakes.

Thank you for considering my comments on the proposed NR 115.

Yours very truly,


Paul A. Kuhn, P.E.

C: Senator Jim Holperin



MARK P. HARTZHEIM, Supervisor
BRYAN JENNINGS, Supervisor
JOHN L. THOMPSON, Supervisor
SUSAN M. HEIL, Supervisor

TOWN OF MINOCQUA

POST OFFICE BOX 168
MINOCQUA, WISCONSIN 54548-0168
PHONE: (715) 356-5296
FAX: (715) 356-1132

JOE HANDRICK, Chairman
ROBEN A. HAGGART, CMC
LAURA R. MENDEZ, Treasurer

August 26, 2009

Honorable Mark Miller
Chairman, Senate Committee on Environment
Rm. 317 East, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707

Honorable Spencer Black
Chairman, Assembly Committee on Natural
Resources
Rm. 210, North Capitol, P.O. Box 8952
Madison, Wisconsin 53708

RE: NR 115 (CR 05-058)

Dear Senator Miller and Representative Black:

As you are both aware, the Department of Natural Resources (DNR) has recently proposed a revision to the minimum standards in their Shoreland Management Rules. We are aware the newly proposed rule, NR 115, has been forwarded to your committees in the Wisconsin Legislature for review and approval action. We, as members of the Town of Minocqua's Economic Development Task Force, are extremely concerned with this rule and how it will impact individual and business properties that lie within 1000 feet of a lake, pond, river or 300 feet from a floodplain by:

- Limiting structural expansion within the shoreline setback
- Limiting development of substandard lots
- Limiting development of "hard surfaces" greater than 15% of the area without mitigation

We truly appreciate the revised administrative rule's positive aspects of broadening protection of our state's public waters, maintaining and improving the waters' quality, and protecting the waters' fisheries and wild life habitat. **HOWEVER**, the revisions in this rule will have a significant negative impact on the majority of Minocqua's businesses as well as other similar communities in northern Wisconsin. As required by the state's Regulatory Flexibility Act the DNR was required to include with the rule's packet an analysis of the impact and costs this rule will impose on small businesses. Their analysis does **NOT HONESTLY OR ACCURATELY ADDRESS** the proposed rule's impact on small businesses located near navigable waters, or acknowledge the negative impact (costs) on the economic well being and growth potential of northern Wisconsin businesses and communities like Minocqua, Woodruff, Arbor Vitae, etc.

Specifically, this proposed rule will negatively impact small businesses in these communities as follows:

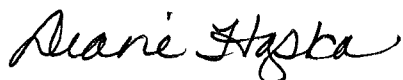
- Lacking equal/consistent, statewide treatment for state residents, property owners and small businesses

- Does not take into account the wide variation of geography and business demographics/sectors throughout the state's 72 counties, but expects the counties to enforce the strict requirements of the rule consistently
- Listening sessions and public input in 2002, 2003 & 2007 did **NOT** allow for comments and input on the current , revised version of NR 115 / CR05-058
- Wisconsin's Shoreland Management Program is supposed to be a "Partnership between state and local government" that allows for development near navigable lakes and streams, which is CRITICAL to the economies of most towns in northern Wisconsin. The revised NR 115 does not allow for equal and consistent application across the state thereby placing certain communities and businesses at a **competitive disadvantage**.

This committee, appointed to enhance and promote environmentally friendly business and job development, and the local business owners in Minocqua appeal to you to address these concerns as they will have a monumental impact on the future economic health of Minocqua as well as many other small unincorporated communities throughout Wisconsin. It is important to address how the rule's minimum standards, as proposed, do not treat businesses, individuals and communities equally. Nor does the DNR's analysis of small business impact accurately reflect the short and long term costs to those in towns adjacent to navigable waters. Therefore, the revised rule must be modified to provide "**Reasonable Accommodations**" in order to not unlawfully discriminate against those communities and businesses by imposing a competitive disadvantage.

We appreciate your attention to this important matter and the appropriate action to correct the shortcomings of this proposed administrative rule.

Respectively yours,



Diane Hapka, Chairman
Minocqua Economic Development Task Force

CC to:

Senate Committee on Environment
Assembly Committee on Natural Resources

Representative Dan Meyer
308 North, State Capitol
P.O. Box 8953
Madison, Wisconsin

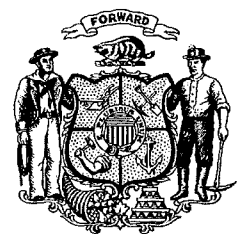
Senator Jim Holperin
409 South, State Capitol
Madison, Wisconsin 53707

Joe Handrick, Town Chairman

Econ. Devlpmt. Task Force Members: Phil Albert, Joseph Fahrenbach, Al Hanley, Jim Kumbera, Don Gauger, Buz Brooks, Jim Ellis, Diane Hapka,



WISCONSIN STATE LEGISLATURE



RACINE COUNTY
PLANNING & DEVELOPMENT DEPARTMENT
PLANNING DIVISION

14200 Washington Avenue
Sturtevant, WI 53177
phone: (262) 886-8470 fax: (262) 886-8488
www.racineco.com

August 31, 2009

Representative Spencer Black
Chair, Assembly Committee on Natural Resources
P.O. Box 8952
Madison, WI 53708-8952

Senator Mark Miller
Chair, Senate Committee on Environment
P.O. Box 7882
Madison, WI 53707-7882

SUBJECT: Racine County Opposition to Proposed Revisions to NR115, Wisconsin's
Shoreland Management Program, Clearinghouse Rule 05-058

Dear Representative Black and Senator Miller:

Please accept this letter into the public comments record showing that the Racine County Planning and Development Department is opposed to the proposed changes in the NR 115 Wisconsin Administrative Code as approved and adopted by the State of Wisconsin Natural Resources Board on June 24, 2009.

The proposed amendments to NR 115 will create an additional burden and increase costs for county staff and the public. Counties would have additional workload to administer the new changes. Counties would be spending additional time, effort and money on things such as: rewriting ordinances, publishing public hearing notices in newspapers, holding meetings to approve ordinance and fee changes, printing ordinance changes, training staff, explaining the revisions to customers (including staff time and phone expense), reviewing additional land divisions for compliance, learning sound forestry and soil conservation practices needed for creating required vegetation management standards, reviewing allowable shoreland vegetation buffer restoration and/or maintenance plans, reviewing and calculating access and viewing corridors, learning best management practices needed for reviewing impervious surface standards, creating and approving mitigation standards, analyzing pre- and post-construction runoff calculations and technical standards, conducting regular work inspections (time and travel costs), and last but not least -enforcing shoreland standards, mitigation plans and approved buffers in perpetuity. For some counties, the above could require acquiring additional staff at taxpayer expense, which would necessitate the costs associated with this (salary, fringes, office rent, phone, office furniture, etc.).

Counties may be forced to assess higher fees to citizens in an attempt to recover the cost of additional time and effort going into the shoreland ordinance required services. Citizens would pay additional permit fees for structures (patios, driveways, sidewalks, etc.) that presently do not require permits. In addition, citizens would be subjected to survey fees, engineering fees, landscaping/revegetation costs, mitigation plan approvals, and overall delays in permit issuance. There is no guarantee that costly and time-consuming plans will be approved. The proposed changes could encourage people to attempt to disregard obtaining a zoning permit to avoid the more onerous provisions of the rules, creating enforcement issues. For example, it would be fairly easy for someone to buy and install patio block or to snap together a plastic tool shed over the weekend without first obtaining a zoning permit to avoid impervious surfaces regulations.

The proposed rules do not take into account that not all counties in the State are the same in terms of development. Racine County lakes are for the most part urbanized and sewered, not like some pristine wooded, low-density, non-sewered northern-Wisconsin riparian lots. The idea of changing the landscape from a mowed lawn to bug infested tall grass is not realistic for this area. We have a hard enough time getting people to go along with the Gard Bill mitigation requirements. Therefore, I would expect significant enforcement problems for urbanized counties with the administration of this code. I would expect that this code would require additional county employees and expense to administer the vegetation and mitigation plans, inspections and enforcement aspects.

In addition to the above, I have the following technical comments on the proposal:

1. In NR 115.03(4g) "Impervious surface" includes sidewalks, driveways, parking lots, and streets, unless specifically designed, constructed, and maintained to be pervious. I would assume that this would also include patios. These items, when at-grade, do not impose a visual obstruction and many counties, including Racine County, do not typically issue zoning permits for them as structures. It would appear that the rule change would require us to issue zoning permits for these items to keep track of the percent impervious surface limit, and it is not clear whether we would need to impose zoning setback restrictions from these so called structures to buildings and lot lines, and whether we are to include these items as part of the total square footage limits for accessory structures on a lot.
2. NR 115.04(2)(b) states that a county shall zone all shorelands designated as wetlands on the amended Wisconsin wetland inventory maps in a shoreland-wetland zoning district. Many counties do not regulate point symbols or small wetlands that are on inventory maps. Racine County only regulates shoreland-wetlands that are 5 acres or greater in size. This language should be changed to reflect current policy, otherwise this becomes an unfunded mandate.
3. NR 115.05(1)(a)1&2 establish minimum lot sizes utilizing "average width" of lots. The current DNR web site indicates that the lot "frontage" is used instead of "average width," so this should be updated. In addition, Racine County determines lot width at the street yard setback, so this will set up a different and difficult standard to measure when side lot lines are not parallel to each other.
4. NR 115.05(1)(b)1. requires a minimum shore yard setback of 75', but does allow shore yard averaging down to 35' for principal structures. The Racine County code currently allows a 75' setback for standard size lots and a 50' shore yard setback for

substandard lots, and like many county ordinances, gives allowance for shore yard averaging with abutting homes. The rule change could make some existing code-compliant shoreland structures noncompliant on substandard lots.

5. NR 115.05(1)(b)1m. lists structures that are exempt from the shoreland setback standards. It does not list piers and boat hoists that are currently exempt from shore yard setbacks. Many people pull canoes, kayaks, Jon boats, sailboats, boat lifts, piers, etc., on shore between use and in winter for storage, and yet it appears that these could be interpreted as being structures subject to the shore yard setback, which would create a regulatory nightmare. The rule needs to be revised to exempt these small objects that are easily moved by hand. In addition, boathouses which are currently exempt from shoreland setbacks, must now be located entirely within the "access and viewing corridor" which is defined as a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone. How do you establish safe access (or viewing) through a boathouse? Note that NR 115.05(1)(c)2.b. indicates that the "access and viewing corridor" may not exceed the lesser of 30% of the shoreline frontage or 200 feet. What if an existing parcel only has 20' of lot width at the water, but widens thereafter? In this case, the corridor would only be 6' wide. This would not allow placement of a boathouse, and leaves little room for access or viewing. The location of boathouses should remain exempt from the shore yard setback, and should not be restricted to be within the "access and viewing corridor." There should also be an established minimum access and viewing corridor width allowed for all lots, perhaps 20'. The corridor width should allow a reasonable view of the water from the structure. People on waterfront lots want to be able to have a window view of the water for aesthetic reasons, and need to be able to see their pier and boat for security and safety reasons.
6. NR 115.05(1)(c) requires county regulation of vegetation removal in a shoreland area. It is not clear if this would encompass an area within 1000' of all lakes/300' of rivers, which would include lots without shoreline frontage. If so, the rule would be difficult to administer and enforce. Hopefully we don't need standards for citizens to pull out annual flowering plants and vegetable gardens at the end of the season. Any vegetation removal regulations should be restricted to riparian lots.
7. NR 115.05(1)(c)2.d. allows the removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, and that which creates a safety hazard. It should be noted that county zoning staff do not have a botany/landscaping background to properly determine what should be allowed to be removed. In addition, this rule requires the replacement of removed vegetation by replanting in the same area. If the location of a tree poses an imminent safety hazard, why would a replacement tree have to be in the same area? In addition, it seems unfair to economically burden a landowner to replace trees that die due to something that is out of their control, such as with oak wilt or other diseases, lightning, winter ice heaves, wind, or fire damage. This rule would be difficult to administer and enforce.
8. NR 115.05(1)(e) will require counties to adopt impervious surface standards. This is an unfunded mandate and should be optional for counties to address. We are not engineers and are not qualified to analyze mitigation plans that could deal with designs, technical standards or best management practices for stormwater drainage due to impervious surfaces. Applicants would be burdened to submit a detailed plan or would need to hire someone (surveyor or engineer) to determine the total lot area and total square footage of all impervious structures (residence, garage, sheds, decks, landings, walkways, driveways, etc.) in order to attempt to obtain a zoning

permit for a structure. Applicants could end up spending hard earned money on a survey only to find out that the impervious surfaces exceed 30% of the total lot area, and that no permit could be obtained. If impervious surface coverage falls between 15-30% of the lot area (which will involve most projects), a mitigation plan and possible engineering analysis would be required. This will bog down the entire zoning permit issuance process, and be extremely costly to the property owner. Mitigation plans should not be required for projects with conforming setbacks, regardless of the amount of impervious surfaces, and should only be required for riparian lots that exceed 30% surface coverage, and not all lots within 1,000 feet of a lake or 300 feet of a stream. Lots that are across the street from waterfront lots will have drainage to road culverts, not directly to the navigable water. Impervious surface regulation will place a tremendous burden and terrible enforcement problem on counties, especially if we have to follow-up on complaints for the installation of every patio, dog house, pool, sauna, sidewalk, small shed, etc., that cover the land. We do not have time, staff or funds to get involved with these issues.

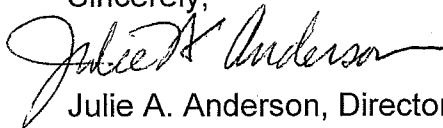
9. NR 115.05(1)(f) requires a maximum 35' high structure height within 75' of the shore; however, it does not define how the 35' height is determined. Is this the peak height, average height, shore or street side height, etc.? I would recommend that each individual county be able to utilize their definition of building height for this determination.
10. NR 115.05(1)(g) requires property owners to implement a mitigation plan for any expansion of a nonconforming structure that is less than 75' from the ordinary high-water mark (OHWM). In addition, the rule does not allow any expansion if the structure is less than 35' from the OHWM. On lots where expansion is permitted, a mitigation plan will be required and must have measures that are proportional to the amount and impacts of the expansion and must offset the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. It should be noted that zoning staff do not have an engineering or botany/landscaping design background, are not experts in this field, and should not be relied upon to approve plans for mitigation. It would be expected that most plans will involve the installation of a vegetative buffer, or no-mow area within 35' of the OHWM. In an urbanized lake setting, it will be difficult to entertain the idea of providing buffers that will become a haven for ticks, rodents, snakes and mosquitoes, which are not welcomed by many citizens and can be carriers of diseases. The development pattern that will be created with the required buffers is a lawn/wild native buffer hodgepodge effect that will not be aesthetically pleasing in an urbanized setting.
11. NR 115.05(2) requires county review for code-compliance of land divisions in shoreland areas for three or more lots that are created with a size of 5 acres or smaller in a 5-year period, "pursuant to s.236.45, Stats." The referenced state statute allows, but does not require, review of land divisions as stated. The land division language should be in a subdivision ordinance, not a shoreland zoning ordinance. Racine County does not have a Certified Survey Map ordinance, and currently deals with subdivisions when there are five or more parcels created within a 5-year period that are three acres or less in size, so the proposed rule will create additional county workload. In addition, the required review includes consideration of items that should not involve our office, such as: hazards to the health, safety or welfare of future residents (could create an unforeseeable liability to the County); adequate stormwater drainage facilities (the local municipalities deal with this in Racine County), and; conformity to state law and administrative code provisions (would require knowledge of all state codes).

12. NR 115.05(4)(d) requires that the county do "regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance." While this language is similar to current NR 115 content, the new code will kick in requirements for mitigation plans that involve vegetative buffers, etc., and would put an extreme burden (time, effort, and travel expense) and liability on county staff to require regular inspections and ensure conformity, when staff are not licensed inspectors, engineers, or surveyors, and should not be burdened with this responsibility. Currently, the licensed municipal building inspector conducts inspections of permitted structures in our county.

In conclusion, there are still many issues with the NR 115 draft that could severely restrict value-added development in Racine County, and would create enforcement nightmares for zoning officials. The riparian landowner would be subjected to time delays and additional costs in order to secure zoning permits under the new rules. County workload would increase as mitigation/vegetative buffer plans would need to be reviewed and issued for nearly every shoreland project, along with having to provide staff to inspect each project. This rule would create another set of standards that constitute an unfunded mandate. There is a need to shift some of the responsibilities to other agencies, both state and local, for the review of mitigation plans and shoreland restoration, as well as ensuring subsequent code-compliance in perpetuity. While it is good to encourage shoreland protection and improved water quality, many of the suggested practices should be carried out on a voluntary basis by individuals, on a local lake association management level, or by counties if they so desire to implement the proposed rules. As it stands now, it would be better to leave the current original NR 115 unchanged, and allow counties to enforce the shoreland area as they presently do, than to create the additional burden and increase in costs for county staff and the public as proposed in the drafted NR 115.

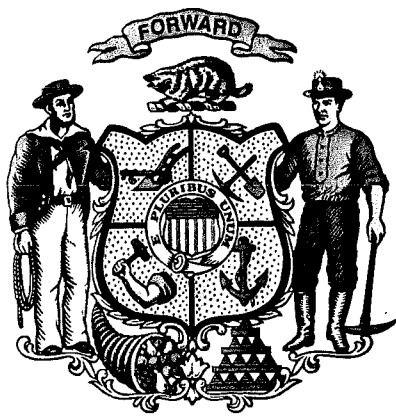
Please don't hesitate to contact me if you have any questions.

Sincerely,



Julie A. Anderson, Director
Racine County Planning and Development

cc: County Executive W. McReynolds
County Board Chairman P. Hansen
Economic Dev. & Land Use Planning Comm. Chairman R. Grove
Representative R. Vos
Senator J. Lehman
Representative S. Kerkman
Representative R. Turner
Representative C. Mason
Representative S. Gunderson
Senator R. Wirth
Senator M. Lazich



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DATE:9/2/2009

TO: Senate Committee on Environment
Senator Mark Miller, Chair
Senator Robert Wirch
Senator Neal Kedzie
Senator Luther Olsen
Senator Robert Jauch

RE: Clearinghouse Rule 05-058
Proposed Revisions to NR115, Wisconsin Administrative Code
Shoreland Zoning

I appreciate this opportunity to share my perspective on how these proposed revisions to shoreland zoning affect not only thousands of lake and stream properties in Waushara County, but many other rural landowners and taxpayers throughout the State of Wisconsin. I will keep my comments brief.

I have been employed by Waushara County for 33 years, the last 28 as County Zoning Administrator, and the last 8 as Director of Land Conservation and Zoning. With 96 lakes and 150 miles of trout streams, I am intimately familiar with shoreland zoning and its effects on riparian properties.

I am also aware that the current NR115 is 40 years old and is in desperate need of work. Compared to the first two drafts, this is by far the most palatable for landowners and counties, and contains the most common sense. Therefore, I support the proposed revisions, with two exceptions:

- The impervious surface limitations
- The lack of financial assistance for implementation

As a person deeply involved every day in water quality issues, I recognize the importance of preserving the integrity of our ground and surface water resources. I also recognize that limiting impervious surfaces is one way to protect those resources. However, as an Administrator I also have to look at how laws are applied, and my conclusion is that the impervious surface provisions will come at a price. They will be costly and difficult for the lake property owner, and they will be equally as costly and difficult for the counties.

I therefore respectfully suggest that the impervious surface limitations be stricken from the proposal. If that is not your decision, then increasing the thresholds and limiting these restrictions to only riparian lots (rather than all lands within the shoreland area) would at least reduce the burden to the taxpayers and the counties.

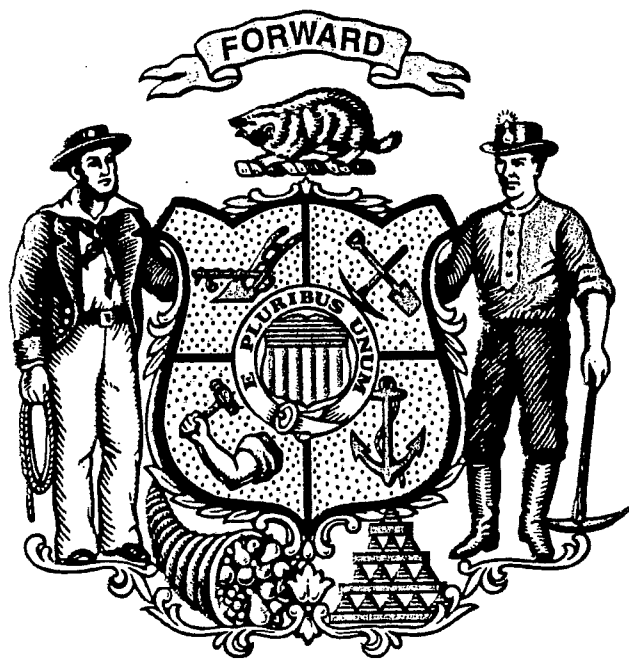
My second concern is the same as everyone else's – money. If these provisions pass, it will be the third state legislative directive in less than a year that increase workload for county zoning offices – all without funding in very difficult economic times. We have already reduced staff because of these difficult times, and may have to again, so it is a struggle for us to administer existing duties, much less new ones. It will also force counties to re-write their codes within two years. Without planners, we have no resources to do this. DNR's response is to have us compete with the other 71 counties for limited money available through the lake protection grant program. That is not an acceptable alternative, as there is no assurance of financial support to meet the inflexible deadlines contained within these revisions. If segregated dollars cannot be provided as part of this proposal, then I suggest these inflexible deadlines be extended until counties are able to obtain financial assistance in re-writing their codes.

In closing, I once again want to thank the Committee Chair and all the members for this opportunity to testify, and I stand ready to answer any questions you may have.

Thank you.

Mark Schumacher

Mark Schumacher, Director
Waushara County Land Conservation & Zoning



Wisconsin Towns Association

Richard J. Stadelman, Executive Director

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Shawano, Wis. 54166

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To: Assembly Natural Resources Committee

From: Richard J. Stadelman, Executive Director

Re: Clearinghouse Rule 05-058 NR 115 Shoreland Protection Program

Date: September 2, 2009



On behalf of the member towns of Wisconsin Towns Association, we request that the Committee object to parts of the **Clearinghouse Rule 05-058, "NR 115 Shoreland Protection Program."** This memorandum will address a specific part of this rule as adopted by the Department of Natural Resources (DNR) board that we ask for the committee's objection. The memorandum further comments on the impact of this rule on the administration by counties.

The draft rule as adopted by the DNR board imposes a new performance standard of limiting impervious surfaces within 300 feet of a river and 1,000 feet of a lake in unincorporated areas (only the towns) of Wisconsin. The current NR 115 shoreland rules, while applying to this same distance from rivers and lakes in towns only required a 75 foot setback from the ordinary high water mark for structures. The impervious surface limitation established in the new rule under Sec. NR 115.05 (1)(e)3. will limit the impervious surface to no more than 15% of the shoreland lots [300 feet from a river and 1,000 feet from a lake ordinary high water mark (OHM)], unless a permit is issued by the county for up to 30% of the shoreland lot when a mitigation plan is approved by the county and implemented by the property owner. While this proposed rule offers more flexibility than early drafts proposed by the DNR in the past years, the impervious surface standard will impose an undue hardship on many property owners in towns in Wisconsin. Therefore, Wisconsin Towns Association requests that the Committee object to this portion of the Clearinghouse Rule 05-058 as indicated:

Object to Sec. 115.05 (1)(e)3., which imposes a maximum impervious surface area on a shoreland lot of not more than 15% or 30% impervious surface if a county issues a permit that requires a mitigation plan approved by the county and implemented by the property owner, because this portion of the rule will impose an undue hardship on property owners and towns across the state.

We ask that the committee find the proposed rule will impose an undue hardship for several reasons. First, the NR 115 Shoreland Protection Program only applies to land in unincorporated areas of the state (towns), unless the land was annexed after May 7, 1982 or incorporated after April 30, 1994. This requirement, which is a new performance standard with greater impact than current law, will impose an undue hardship on many property owners within 300 feet of a river and 1,000 feet of a lake that were previously only subject to a structural setback requirement.

While one of the major purposes of a shoreland protection program is to improve and protect water quality, the imposition of a new performance standard at 15% maximum (with 30% if a mitigation plan is approved and implemented) will affect a very significant number of property owners of existing businesses and residences (both permanent and seasonal). We would ask that the DNR apply a higher standard of 20% of the shoreland lot rather than 15%.

In the alternative we suggest to modify the rule to only apply the standard of 15% to shoreland lots within 150 feet or 200 feet of the ordinary high water mark (OHM). Beyond this distance there would be no impervious surface requirements. It should be pointed out that there are many residential and business developments throughout Wisconsin towns that were established long before the 1960's when the original shoreland zoning standards using a structural setback of 75 feet was imposed that are within the 300 feet of a river and 1,000 feet of a lake that will be arbitrarily impacted by the new impervious surface standard as written in this new rule. These old established developments with small back lots will now be subject to a performance standard that will be very difficult to meet. While state law (Sec. 59.692 (1s) of Wis. Statutes) and the rule allows rebuilding of existing structures on the same "building envelope" for nonconforming structures *"damaged or destroyed after October 14, 1997, when the damage was caused by violent wind, vandalism fire, flood, ice, snow, mold or infestation"*, there will be many undeveloped lots in these areas up to 300 feet from a river and 1,000 feet from a lot that will be subject to the new standards. The proposed rule will limit redevelopment to existing building envelopes and will limit new development on old established developments with small back lots in towns in an arbitrary and unfair manner.

Another alternative to retaining the current 15% maximum with 30% under county permit with mitigation is to use a higher standard at a greater distance from the ordinary high water mark. For example, impose a 20% maximum with 40% level under county permit with mitigation beyond a distance of 150 feet or 200 feet from the ordinary high water mark. This higher suggested standard on the back lots will create less nonconforming structures and allow more flexibility for the very small back lots in old and established developments. This alternative still retains the higher performance standard on front lots bordering the water, while creating flexibility for very small back lots, that may be undeveloped now. To impose the 15% maximum to the full 300 feet from a river OHM and 1,000 feet from a lake OHM is a performance standard that will create undue hardship on property owners and towns. Using the performance standard of impervious surface limits within a distance of 150 feet to 200 feet from the OHM will improve water quality, while not imposing an undue hardship on others beyond that distance.

It should be pointed out to the Committee that because the NR 115 Shoreland Protection Program only applies to unincorporated lands (towns) in Wisconsin {unless was annexed after May 7, 1982 or incorporated after April 30, 1994}, there are many towns with both small and large established developments around the state that will be impacted by the new impervious standard when applied to the 300 feet from a river and 1,000 feet from a lake. Some of the more recognizable towns with these types of both residential and commercial developments are the towns of Minocqua, Woodruff, and Three Lakes in the north. However, there are many other towns across Wisconsin that have similar small unincorporated cross road communities that were developed before the 1960's which now will have substantial existing development that will be non-conforming uses and structures.

It would be unfair to ask established cities and villages to meet these new performance standards for established developments within the 300 foot and 1,000 foot distances. It is just as unfair to impose the new standards on towns with the same type of existing development. We

urge the committee and legislature as a whole to recognize the inequity of this distinction for towns versus cities and villages. Redevelopment and new development for off-water front property will be limited in towns that have these old and established areas. Limiting this type of development in these areas runs counter to another statewide initiative included in the state budget to preserve "working lands." If existing lots in these unincorporated areas within the 300 feet of a river and 1,000 feet of a lake can not be developed, new development will likely eat up more farm land and forested land away from the water. Using the nonconforming lots (albeit within 300 feet of a river and 1,000 feet of a lake) before building on productive agricultural land and forested land makes more sense for the economic good of the state and towns.

In addition to our request to object to the portion of the rule noted above, our association also wants to express similar concerns to the Wisconsin County Code Administrators (WCCA) specific to issues of implementation and administration of the revised NR 115 rule. One of the criticisms of the current rule was that it was applied differently in different counties by the code administrators. If this criticism is to be overcome with the new code, we support the WCCA request for adequate training for administrators, local officials, contractors, and the general public. The new performance standard based on maximum impervious surface areas or mitigation techniques is a concept that needs more public understanding and discussion. While some of the problems with the existing code (such as the 50% rule) will no longer exist for county code administrators to apply, the application of the impervious standard to the full 300 feet of a river and 1,000 feet of a lake will greatly increase the number of lots that will be subject to review and permitting, as opposed to sole application of the 75 foot structural setback requirement under the current rule. State funds should be appropriated for this type of education effort, or the effective date of the rule should be pushed back until such an effort can be funded by the state.

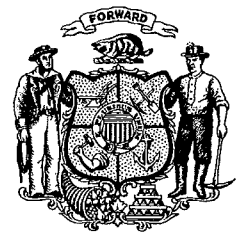
Town officials also recognize the costs that counties and thus county taxpayers will have to bear to update county shoreland zoning ordinances and properly train county staff to administer the new code. While not a new unfunded mandate, the new proposed rule will be an unfunded mandate upon counties at a time of cuts in shared revenue and levy limits. The question that needs to be asked is whether this new requirement that should be forced upon the counties in the next two years or can a longer implementation time be provided to reduce the immediate costs?

In conclusion, we request the committee to object to the portion of the rule in Sec. 115.05 (1)(e)3. that imposes the impervious surface standard of 15% to all shorelands within 300 feet of a river OHM and 1,000 feet of a lake OHM. Further, we would ask the committee to consider directing the DNR to give a longer time to implement the rule for the reasons stated above.

Thank you for your consideration in this matter.



WISCONSIN STATE LEGISLATURE



11384 CTH "B"
Presque Isle, Wisconsin 54557
September 2, 2009

**Public Information Session-Chapter NR 115-Three Lakes, Wisconsin
September 3, 2009**

To: Senators Mark Miller and Jim Holperin

The proposed NR 115 draft strikes a nice balance.

Protective practices required of owners of shoreland properties promise to protect Wisconsin lakes and waterways.

Allowances for property owners to continue using and modifying legally created nonconforming existing structures accommodate landowners in a very generous fashion.

Other strong points I see in proposed NR 115 are as follows:

- Delegation of authority to the 72 counties, keeping the implementation local and spreading the administrative work over a broad group of zoning personnel
- Extraordinary attention paid to the protection of shoreland-wetlands
- Specific and understandable numerical descriptive values for parcel sizes, structure setbacks and near-shore pruning and clearing activities
- Clear, understandable, broad requirements for installing mitigation features when dealing with impervious surfaces on shoreland properties: It appears that county zoning officials may choose to participate in the design of acceptable mitigation practices with individual landowners during permitting, making the process easier for uninitiated owners to deal with.

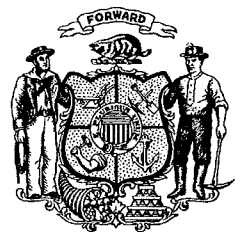
Weak points I see in the proposed NR 115 are as follows:

- Existing unincorporated commercial areas such as the Village of Minocqua, Village of Presque Isle, Manitowish Waters, which have long-standing areas of impervious structure roofs and parking lots near shores of lakes and waterways may have difficulty dealing with future expansion. Impervious surfaces probably already exceed 30% of many commercial parcel areas at present, appearing to negate any form of building modification.
- The ability to replace a non-conforming structure has a requirement that may be hard to prove in many cases: *"The use of the structure has not been discontinued for a period of 12 months or more."* Can this requirement be defined more clearly? Does a one-night-stay in a 365-day period count for continuous use of a little-used structure? How will the owner prove that the structure has occasional intermittent use?

This draft Chapter NR 115 promises to protect valuable Wisconsin riparian resources. Its strong points are many. Its weak points are few. I encourage you to pass this Chapter and place it into the Wisconsin Administrative Code.



Alan Drum
Presque Isle, Wisconsin



Sandy Gillum
1875 Bald Eagle Lane
Eagle River, WI 54521
715-479-6051

NR 115 Hearing
Three Lakes, WI
September 3, 2009

I support the new NR 115 shoreland zoning package that was approved by the Natural Resources Board. This NR 115 is a consensus position. It was achieved by a wide range of stakeholders...Realtors, builders, county governments and water advocates. It was difficult to achieve, yet it was achieved by this coalition. This product of their work is the first revision since 1968 and should be advanced without modification.

NR 115 simply establishes "bare bones" minimum standards. Once this NR 115 is approved, counties should be encouraged to adopt new or revised shoreland ordinances tailored specifically to conserve the quality of shorelands and waterbodies within their boundaries. These locally adopted standards should customize protection to an extent greater than the minimum standards provided by NR 115.

Over the last 41 years the quality of our lakes has suffered due to our lack of diligence in updating lake protection measures as we gained information about lake ecology. Our knowledge about the aquatic system of lakes is constantly increasing. With this knowledge, we can better protect these statewide natural resources that provide recreational pleasures and scenic beauty. Incorporating what we have learned into our standards of lake conservation will provide our generation and generations yet to come with the enjoyment and economic resources gifted to us by our Wisconsin lakes.

The northern counties of Wisconsin hold the largest concentration of fresh water lakes in the world. This region has much water to celebrate and protect. Thank you for opening this forum for this region.

S. S. Gillum